January 3, 2023

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Tythe Gladden**
Tax Registry No. 940194
Police Service Area 2, Viper 2
Disciplinary Case No. 2021-23833

The above named member of the service appeared before Assistant Deputy Commissioner Josh Kleiman on August 12, 2022 and was charged with the following:

DISCIPLINARY CASE NO. 2021-23833

1. Said Police Officer Tythe Gladden, on or about June 19, 2021, while assigned to the 30th precinct and off duty in Nassau County, having been involved in an incident to which police responded, did fail to notify the Department Operations unit as required.
P.G. 212-32, Page 1, Note **OFF DUTY INCIDENT INVOLVING UNIFORMED MEMBERS OF SERVICE**

2. Said Police Officer Tythe Gladden, on or about June 19, 2021, while assigned to the 30th precinct and off duty in Nassau County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer Gladden had a physical altercation with a person known to the Department.
A.G. 304-06, Page 1, Paragraph 1 **PROHIBITED CONDUCT**

In a Memorandum dated September 14, 2022, Assistant Deputy Commissioner Josh Kleiman found Police Officer Tythe Gladden guilty of Specification No. 1 and not guilty of Specification No. 2 in Disciplinary Case No. 2021-23833. Having read the Memorandum and analyzed the facts of this matter, I approve of the findings and the penalty recommendation.

Having considered the totality of the circumstances and issues concerning the misconduct for which Police Officer Gladden has been found guilty, separation from the Department will be implemented as follows.

In lieu of dismissal, I direct that an ***immediate*** post-trial settlement agreement be implemented with Police Officer Gladden in which he shall forfeit thirty (30) suspension days to be served, forfeit all time and leave balances, be placed on one (1) year dismissal probation, and immediately file for vested interest retirement.

Such vested interest retirement shall also include Police Officer Gladden's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Police Officer Gladden does not agree to the terms of this vested interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented ***IMMEDIATELY.***

Keechant L. Sewell
Police Commissioner

POLICE DEPARTMENT

September 14, 2022

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-23833
Police Officer Tythe Gladden	:	
Tax Registry No. 940194	:	
Police Service Area 2, VIPER 2	:	

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Gina Dieckmann, Esq.
Kathryn Falasca Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth and London, LLP
111 John Street. Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Tythe Gladden, on or about June 19, 2021, while assigned to the 30th precinct and off duty in Nassau County, having been involved in an incident to which police responded, did fail to notify the Department Operations unit as required.

   P.G. 212-32, Page 1, Note — OFF DUTY INCIDENT INVOLVING UNIFORMED MEMBERS OF SERVICE

2. Said Police Officer Tythe Gladden, on or about June 19, 2021, while assigned to the 30th precinct and off duty in Nassau County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer Gladden had a physical altercation with a person know to the Department. *(As added)*

   A.G. 304-06, Page 1, Paragraph 1 — PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 12, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Nicholas Graziano and Sergeant Eduard Sandoval, as witness, and submitted the hearsay statements of Complainant and her son. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal finds Respondent Guilty of Specification 1 and Not Guilty of Specification 2. The Tribunal recommends that Respondent be Separated from the Department.

ANALYSIS

It is undisputed that on June 19, 2021, Nassau County police responded to Respondent's home, which he shared with his longtime girlfriend, Complainant. Their response was based on a 911 call placed by Complainant's 18-year-old son. On the 911 call, the son reported that his

"mother and her boyfriend are fighting" and "my mother claims that he just choked her" (Dept. Ex. 1).

Upon arrival, police interviewed the mother, who denied that she had been choked, stating that she had only had a verbal argument with Respondent. A Domestic Incident Report was prepared for a verbal argument. It noted that Complainant was calm and there was no sign of bruising or injuries (Dept. Ex. 2). In Complainant's narrative, Respondent is identified as a Member of the Service. No arrests were made.

On July 5, 2021, Complainant was re-interviewed via telephone by a Department investigator, restating that she had not been choked by Respondent and had only engaged in a verbal argument with him (Dept. Ex. 3 at 1:20-2:50). On August 24, 2021, Patrol Borough Manhattan North Investigations Unit, substantiated an allegation of failing to report an off-duty incident and requested that Respondent be issued a schedule "B" Command Discipline. On September 9, 2021, the Department Advocate's Office formally charged Respondent with one specification of failing to report an off-duty incident.

It was stipulated at trial that in early 2022, the Department Advocate's Office directed Department investigators to interview Complainant's son, who theretofore had not been interview by Department investigators. Upon being interviewed by Department investigators, via telephone on February 1, 2022, the son stated that upon arriving at Complainant's home to visit his mother on June 19, 2021, he heard his mother arguing with Respondent about an extramarital affair (Dept. Ex. 4 at 2:03-2:59). He noted that verbal arguments between his mother and Respondent were common (*Id.* at 3:06).

At some point, his mother called him into her bedroom (*Id.* at 7:50-7:56). He saw her sitting, "holding her neck," while Respondent walked away from her. She then reported to him

that she had been choked and directed him to call the police (*Id.* at 7:52-8:05). When asked if she had one hand or two hands on her neck, he clarified that it was one hand that was placed "on her chest but it was right below her neck" (*Id.* at 8:07-8:20). He further clarified that he did not witness Respondent put his hands on his mother, nor did he look for any injuries. Upon being asked to describe his mother's demeanor on the incident date, he answered "she didn't seem like scared at all or like urgent . . . . She didn't seem all that concerned" (*Id.* at 4:10-5:03).

When asked about Respondent's demeanor, the son stated that "he did look like he was capable of hurting somebody" (*Id.* at 5:50-6:14). Later that day, he observed Respondent with his head in his hands "looking . . . stressed out" (*Id.* at 11:00-11:05). When asked if this incident was the first time he knew them to argue to the point of a physical altercation, he answered, "I don't believe it's ever escalated to this point before, if I'm being honest."

A few days after the incident, his mother told him that the reason she did not have Respondent arrested was that "she didn't want him to lose his job" (*Id.* at 9:19-9:27). During the same conversation, when he asked his mother if Respondent actually choked her or not, she "dance[d] around" the answer, neither confirming nor denying it (Dept. Ex. 4 at 10:43-11:13). Sometime later, he stated that he re-asked her whether Respondent had choked her, explaining "eventually, she just said 'no,' but I kinda don't believe her" (*Id.* at 11:36-11:47).

Respondent testified that on June 19, 2021, at approximately 1 p.m., he was home with Complainant when he asked her about an inappropriate picture he had seen of her and another man, causing him to suspect infidelity. Respondent explained that, in response, "She kind of yelled at me. She doesn't like to talk about things like that. She yelled at me, and I became angry as well." Between approximately 1:45-2:00 p.m., Complainant's son arrived with a friend;[1] they

[1] The friend was not identified at trial and no prior statements or testimony of the friend were entered into the record.

were located in another room while Respondent and Complainant continued to engage in a verbal dispute. Respondent admitted that while the son was present, the arguing got "real loud." Respondent requested an "E-day" at work in order to continue his conversation with Complainant. (Tr. 105-09, 129)

Respondent claimed that he was unaware that Complainant's son had called 911. He was undressing for a shower when police arrived, at approximately 2:45 p.m. The officers stayed at the residence for approximately 10 to 15 minutes, during which time a Domestic Incident Report was prepared by the officers. Complainant did not receive any medical treatment. Respondent explained that Complainant's son does not like him and lives with his father, who Complainant had previously divorced. (Tr. 105-06, 110-15, 125, 128)

Respondent claimed that "the next day" he called his PBA representative, who told him that they would handle "it" when he came into work next. Respondent admitted, however, that the only person he reported the police incident to was his "PBA rep." (Tr. 114)

On cross-examination, Respondent admitted that Complainant was aware that there could be repercussions for Respondent's employment as a police officer if he became a party to a disciplinary case. He further admitted seeing Complainant's son standing in the doorway to their bedroom while he was making the 911 call. Respondent and Complainant continue to reside together. (Tr. 112, 138, 141)

At the end of his testimony, in response to questioning by the Tribunal, Respondent admitted that he should have reported the matter to Operations. (Tr. 144)

FINDINGS

As to Specification 1, Respondent admitted error and the evidence establishes by a preponderance of the evidence that Respondent was present at the scene of an off-duty incident

under circumstances that required Respondent, pursuant to Patrol Guide Procedure 212-32, to "promptly notify the Operations Unit." Accordingly, the Tribunal finds Respondent Guilty of the misconduct charged in Specification 1.

As to Specification 2, the Department has presented a hearsay case, the resolution of which requires this Tribunal to carefully assess the reliability and weight to be accorded the hearsay evidence. To assess the probative value of hearsay, courts and tribunals typically rely on several key factors, including "the identity of the declarant, the availability of the declarant to testify, the declarant's personal knowledge of the facts, potential bias of the declarant, the detail and range of the hearsay, whether the statements were oral or written, sworn or unsworn, the degree to which the hearsay is corroborated, the centrality of the hearsay evidence to the agency's case, and the magnitude of the administrative burden should hearsay be excluded" (*Police Dept. v. Ayala,* 1989 N.Y. Misc. LEXIS 943, at *6-7 [Sup Ct, NY County Aug. 11, 1989]; *see also Disciplinary Case No. 2016-15157* (Oct. 10, 2017)). When the gravamen of the matter is hearsay evidence, the Tribunal must further consider "the question of basic fairness" (*Id., quoting Calhoun v. Bailar,* 626 F.2d 145, 150 [9th Cir. 1980]), since Respondent is deprived of the opportunity to test the credibility of an essential witnesses under cross-examination and the Tribunal lacks the ability to assess witness credibility based upon factors, such as demeanor, that only live testimony affords.

The instant case, however, is one of alleged domestic violence. The Tribunal is all too aware of the many problems inherent to the prosecution of such cases, including the likelihood of hostile, reluctant, and/or recanting complainants and the lack of objective eyewitnesses given that domestic incidents typically occur in places, such as the home, where disinterested witnesses are unlikely to be present. Accordingly, while hearsay evidence is deemed inherently suspect

under the law, the reality in domestic violence cases is that the first out-of-court statement of a complainant often constitutes the most reliable and persuasive evidence, since such statements are often generated in those rare moments when a victim has the courage to expose their abuser without regard for the potential repercussions.

Here, the Tribunal finds the hearsay statement of Complainant's son to bear significant indicia of credibility. In crediting the son's prior statement, however, the Tribunal acknowledges that the son's statement concerning a physical altercation between Respondent and Complainant constitutes double hearsay, as it constitutes the out-of-court statement of the son, reporting an out-of-court statement made by Complainant. The double hearsay statement of Complainant is not corroborated by any other evidence in the record. Complainant disavowed the double-hearsay at the earliest possible time, i.e. when she spoke with the responding officers. She further consistently described the interaction as no more than a verbal dispute when she was subsequently interviewed by Department investigators.

Accordingly, the only evidence of a physical altercation between Respondent and Complainant on June 19, 2021 is the uncorroborated double-hearsay statement of Complainant's son that his mom told him she had been choked by Respondent and his intuition that his mom was not telling the truth when she subsequently said that she had not been choked by Respondent. This constitutes an insufficient quantum of evidence upon which to support a disciplinary charge.

The Department further made efforts at trial to connect the misconduct charged in Specification 2 with prior misconduct involving a physical altercation between Respondent and Complainant (Tr. 120-25, 131-32, 166). It is well-established that the Department, absent certain narrow exceptions not applicable here, may not rely on evidence of prior bad acts to prove that

an accused acted in conformity therewith for purposes of establishing guilt as to the instant misconduct (*Matter of Brandon,* 55 NY2d 206, 210-11 [1982] ["A general rule of evidence, applicable in both civil and criminal cases, is that it is improper to prove that a person did an act on a particular occasion by showing that he did a similar act on a different, unrelated occasion."]; *People v. Molineux,* 168 NY 264, 291 [1901] ["This rule, and the reasons upon which it rests, are so familiar to every student of our law that they need be referred to for no other purpose than to point out the exceptions thereto."]; *People v Richardson,* 222 NY 103, 110 [1917] ["The natural and inevitable tendency of the tribunal – whether judge or jury – is to give excessive weight to the vicious record of crime thus exhibited, and either to allow it to bear too strongly on the present charge, or to take the proof of it as justifying a condemnation irrespective of guilt of the present charge."]).

Accordingly, the Department has failed to prove by a preponderance of the credible and relevant evidence that Respondent engaged in a physical altercation with complainant on June 19, 2021. As such, Respondent is found Not Guilty of the misconduct charged in Specification 2.

PENALTY

In order to determine an appropriate penalty, the Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history was also examined (*see* 38 RCNY § 15-07). Information from Respondent's personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 9, 2006, has been found guilty of failing to notify the Department's Operations Unit after being involved in an off-duty

incident to which police responded. While the Department Advocate's Office recommended Termination in connection with Specifications 1 and 2, it did not provide the Tribunal with a recommended penalty in the event Respondent was only found guilty of the misconduct charged in Specification 1.

Pursuant to the Disciplinary Guidelines, the failure to notify the Department of involvement in a police incident carries a presumptive penalty of five (5) penalty days and an aggravated penalty of ten (10) penalty days. Under the Disciplinary Guidelines' system of "progressive discipline," however, where Respondent has thrice engaged in the same misconduct, and the prior misconduct resulted in penalties of more than 15 penalty days, the presumptive penalty is termination or forced separation. Furthermore, the Guidelines advise that where the prior misconduct resulted in the imposition of Dismissal Probation, the second incident involving the same misconduct may result in separation or termination.[2]

In 2015,[3] Respondent pled guilty to engaging in a physical altercation with Complainant,[4] damaging her property,[5] failing to promptly identify himself to responding officers,[6] and [redacted]

[2] The Guidelines further instruct that "[i]f the prior act involved multiple violations arising from a single incident, it will be considered one prior act of misconduct" and "[t]he most severe presumptive penalty associated with the prior violations will be used to determine the time limitation and the commensurate penalty increase relative to the current act" (Disciplinary Guidelines at 11-12).

[3] The underlying incident date of the domestic incident was [redacted].

[4] It was alleged by Complainant that Respondent struck Complainant in the head with an object, kicked her, punched her several times in the face, and placed his hands around her neck, causing her to grasp for air. [redacted]

[5] Respondent swung an object at Complainant's car, damaging the hood and breaking the right side view mirror.

[6] Complainant identified Respondent as "a cop" [redacted] A member of the Nassau County Police Department subsequently notified IAB.

providing misleading statements to Department investigators.[7] Respondent negotiated a penalty of 45 penalty days, 31 of which were served on suspension, one year Dismissal Probation, and cooperation with counseling.

In 2019,[8] Respondent pled guilty to driving while intoxicated, leaving the scene of vehicle collision,[9] being unfit for duty on two occasions, failing to notify the Department of involvement in two separate off-duty police incidents, failing to notify his Commanding Officer of summonses issued to him for public intoxication and possession of an open container of alcohol,[10] and the failure to maintain a valid New York State Driver's License. While the then-1st Deputy Commissioner recommended that Respondent be forcibly separated from the Department, the then-Police Commissioner disapproved, approving a negotiated penalty of the forfeiture of 81 penalty days, 61 of which were served on suspension, one-year Dismissal Probation, ordered breath-testing, and cooperation with counseling.

While the failure to notify the Department of an off-duty incident is punished lightly under the Disciplinary Guidelines with a presumptive forfeiture of only five (5) vacation days, it constitutes Termination-level misconduct under the relevant penalty considerations attendant to this case. Essential to the operation of any effective disciplinary system is the identification of

---

[7] At his first Department interview on February 11, 2014, Respondent denied throwing anything at Complainant and denied hitting her. He claimed that a knot on her forehead was caused by Complainant's husband, not him. At subsequent interviews on May 30, 2014 and July 3, 2014, Respondent admitted to striking Complainant, including punching her. He further admitted that he had lied when he said that the knot on Complainant's forehead was caused by her husband. He further admitted throwing an object, but did not recall if it hit Complainant.

[8] The underlying incident dates were November 22 & 29, 2017.

[9] Respondent rear-ended a vehicle and drove away without exchanging information or ascertaining the condition of the occupants. Respondent was identified when the other driver called 911 and reported Respondent's license plate.

[10] On November 29, 2017, members of the Freeport Police Department observed Respondent throw a glass bottle out of a vehicle, causing it to shatter on the roadway. Respondent was further observed sitting in the passenger seat of the vehicle, pouring the contents of a bottle out of the window. A video depicted Respondent as intoxicated and unable to fully comprehend the officers. [redacted]. Two months later, the Freeport Police Department notified the Department of the incident.

patterns of misconduct. Such identification assists the Department with the design of training cycles and investigatory methods, among other tools, all of which are designed to ensure that any identified patterns are monitored and interrupted. When patterns of misconduct are left unidentified, an employer exposes itself to inferences that it was put on constructive notice of such patterns of misconduct and failed to act appropriately to mitigate potential future harm. Where an individual member of the service is associated with a pattern of misbehavior, future misconduct is typically deterred by the promise of increased penalties for each successive violation. Such a system of progressive discipline is not unique to the Department, but is common to most systems of discipline and punishment in our society. It should, therefore, come as no surprise to a member of the service engaging in repeated misconduct that it will likely result in increasingly harsh consequences.

There are few officers in this Department that should be more aware of the duty to promptly report involvement in an off-duty police incident, and the consequences of failing to do so, than Respondent. Were he offered an opportunity to continue his employment with the Department, the accompanying message to his fellow employees would be that there is value in failing to report involvement in off-duty police incidents, even when such misconduct is engaged in repeatedly. The consequences to any Department investigation of a late notification is plain. Witnesses are more likely to be uncooperative or "in the wind" and evidence is more likely to be corrupted or destroyed. Accordingly, the duty to promptly report allegations of corruption or other misconduct, including involvement in an off-duty police incident, serves as a foundational vertebrae of the Department's system of internal investigation and member discipline.

An officer is less likely to engage in the gamble of failing to notify the Department of their involvement in an off-duty incident if the penalty for doing so is equivalent to the penalty

they would have received if the underlying allegations they have intentionally failed to report are assumed proven. This, however, is not the approach taken by the Disciplinary Guidelines. Nevertheless, here, disincentivizing a first, or even a second, violation of this rule is not at issue. Rather, the Department has twice disciplined Respondent, has twice placed him on Dismissal Probation, and has provided him with multiple opportunities to reform his behavior and continue his employment. The instant disciplinary matter is evidence of Respondent's continued defiance of these efforts. Respondent has for the third time, as a police officer, intentionally failed to report his involvement in an off-duty police incident to the Department.

For the foregoing reasons, the Tribunal recommends that Respondent be Separated from the Department, by offer of an immediate vested interest retirement, accompanied by the forfeiture of any time and leave balances, or, if not accepted by the officer, that he be Terminated.

Respectfully submitted,

Josh Kleiman JM

Josh Kleiman
Assistant Deputy Commissioner Trials

APPROVED
JAN 03 2023
KEECHANT L. SEWELL
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER TYTHE GLADDEN
TAX REGISTRY NO. 940194
DISCIPLINARY CASE NO. 2021-23833

Respondent was appointed to the Department on January 9, 2006. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2018, 2019 and 2020. He has been awarded one medal for Excellent Police Duty.

In 2015, Respondent forfeited 31 suspension days, 14 vacation days, and was placed on dismissal probation after pleading guilty to (i-ii) engaging in an off-duty physical domestic altercation where he also damaged personal property, (iii) failing to identify himself as a member of service to responding officers, and (iv) providing misleading statements during two official Department interviews.

In 2019, Respondent forfeited 61 suspension days, 20 vacation days, was placed on dismissal probation and directed to comply with Department counseling after pleading guilty to eleven specifications involving his operating a motor vehicle while intoxicated, leaving the scene of an accident, being unfit for duty on two occasions, failing to notify the Department of involvement in two separate off-duty police incidents, failing to notify his commanding officer of a summons issued to him for public intoxication and possession of an open container of alcohol, failing to notify the Department of a residential address change for over three years, and failing to maintain a valid NY driver's license for over a month.

In connection with the instant matter, Respondent was placed on Level 2 Discipline Monitoring in April 2022; monitoring remains ongoing.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials